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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/504,327

02/14/2000

Dr. Steven Ericsson Zenith

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12/04/2006

WORKMAN NYDEGGER/MICROSOFT  
1000 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UT 84111

EXAMINER

BAYERL, RAYMOND J

ART UNIT

PAPER NUMBER

2173

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/504,327

Applicant(s)

ZENITH, DR. STEVEN ERICSSON

Examiner

Raymond J. Bayerl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18 - 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18 - 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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1. The amendment filed 25 August 2003 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention.

The added material which is not supported by the original disclosure is as follows: Please note that the large quantities of amendatory material appearing at page 3, paragraph 2; page 5, paragraph 5 – page 6, paragraph 3; page 27, paragraph 2 – page 28, paragraph 1; page 37, paragraph 3 – page 38, paragraph 1 are embellishments upon the original specification filed 14 February 2000 that do not correspond directly to what was previously presented. These amount to new matter, and are objectionable under 35 USC 132(a). Applicant's 9 June 2006 response does not even address this ground of objection, nor the implications it has under 35 USC 112, first paragraph.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18 – 31 are rejected under 35 USC 112, first paragraph because there was no written description in the original specification for such amended material as that noted above, in the objection under 35 USC 132(a). The claims are therefore based upon an improper specification and rejected under this ground.

Since claims are to be read in light of the disclosure, a disclosure applicant obviously felt would benefit from the new matter embellishments, they attempt to gain a

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standing with the amendment that is based upon a written description that was not in fact originally filed on 14 February 2000.

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 29, 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

These are claims directed to a “computer program product comprising one or more computer-executable software instructions”, which is a computer program *per se*. Such a claim, apart from a physical implementation (e.g., recordation in a statutory machine-readable medium) does not qualify under any of the 4 statutory classes of invention. Specifically, for it to be a “machine” or “manufacture” would require some aspects of computing hardware or equipment be an actual part of the claim, not that the “software instructions” are potentially “computer-executable”.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 18 – 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (“Herz”; US #6,088,722) in view of Bingham et al. (“Bingham”; US #5,799,298).

As in independent claim 18's provision of an “affinity based interface” for “selecting and presenting information to a user”, Herz similarly provides for the receipt of desired movies and other forms of data from a network (Abstract), according to characteristics in use for characterizing video programming, these to include film

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genres such as westerns, comedies, dramas, foreign language, etc. as defined by the American Film Institute (col 11, line 41 - col 12, line 6), so that the characteristics of content predict the attractiveness of each video program, movie, or other data to each prospective customer. Thus, Herz, working with “a plurality of content sources”, has the end result of returning desired content, and a “virtual” channel is created to receive the program selected to match that customer’s interests (col 48, lines 18 - 34), as in “identifying content” and “filtering the identified content to generate filtered content according to affinity based characteristics”, followed by “presenting the filtered content”. This establishes the affinity that the customer has, as regards the kinds of programming that may be provided.

While the dialog conducted with the Herz customer will discover characteristics relating to a profile, initially obtained according to several ways, such as by zip code or other characteristic demographic information or by monitoring what customers watch (col 12, lines 7 - 58), Herz does not **explicitly** show “a plurality of interface characters that are displayed to a viewer and that are each emblematic of a corresponding affinity based categorization”, so that the “affinity based characteristics” “are associated with the selected interface character”.

However, the selection of graphical “characters” that are “emblematic” in such a way occurs in the system for establishing pattern matching and differentiation disclosed in Bingham. In particular, the user is given a choice of one of the **characters** such as are shown in fig 3, these having differing profile definitions (col 4, lines 13 - 52), with the computer user determining and indicating who are they most like (col 3, lines 9 - 40).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to represent choices in profile definition, useful to Herz's customization, in the form of pre-defined characters as per Bingham because this creates a more friendly and intuitive interface for the specification of that content the user is ultimately interested in viewing, by the introduction of Bingham's human character metaphors.

Clearly in Bingham, "the interface character has a unique presentation style" (claim 19) in the graphics that produce it, as seen in figure 3, and it can be said that such a "style" for a "persona corresponds to a unique style of speech" (claim 20), since the different characters would be expected to speak differently as human beings.

In using Bingham, "an interactive interface" is used "for presenting a dialog to a viewer" (claim 21), at least in the interactions that select the characters. Such a "dialog" "corresponds specifically to content displayed to the viewer" (claim 22), when combined with Herz, and picking a character involves the input of "questions asked by the viewer to the interface character" (e.g., are "you" a character which will be one I select, on the basis of "your" appearance?, claim 23). Further in Herz, **feedback** is obtained for updating the customer profiles in accordance with the video programming actually watched by the customer (col 6, line 43 - col 7, line 4), so that the ongoing use of the Herz selection mechanism have the result that "identified content is filtered at least in part according to interactions between the interface character and the viewer" (claim 24) when adapted as per Bingham.

In generating the predefined characters, Bingham has “pre-scripted...chat dialog” (claim 25) in the form of the personas that those characters present, and in conjunction with the feedback procedure of Herz, this will result in “live chat dialog” as well. It is fully possible that a screen as per Bingham’s will accompany Herz’s “filtered content”, so that “the interface character is displayed simultaneously along with a display of the filtered content” (claim 26), the line of reasoning being that, during a viewing in Herz, the user would access the Bingham characters to pick something else, while the previous program plays in another window. The characters are then used in “providing notifications to the viewer” (claim 28). The content will be “at least one of broadcast content or Internet content” (claim 27). Either of the Herz or Bingham inventions is accomplished via the “computer program product” of claims 29, 31.

Independent claim 30, in “selecting and presenting information to a user through an affinity based interface” using “a plurality of interface character personas” is rejected using the combination of Herz’s “presenting the broadcast content” as per an “affinity” via “viewer selection of an interface character persona from the plurality of displayed interface character personas” that are shown in the Bingham interface. The filtering of Herz is such that “a respective domain of broadcast content” may be specified, as per user desires, something obviously achieved through the selection of characters in Bingham.

8. Applicant’s arguments filed 9 June 2006 have been fully considered but they are not persuasive.

At page 6, applicant argues that “While Herz generally deals with creating customized virtual channels to match user interests and while Bingham generally deals with identifying user preferences through the selection of personas, the combined teachings of Herz and Bingham still fail to make obvious the claimed embodiments”. As an example, applicant argues that “Herz and Bingham fail to disclose or suggest, among other things, that the content identified through the selection of an interface character is presented with the interface character” (claim 1). However, in the interface of Herz in view of Bingham, the characters of Bingham appear along “with” the content, and even if this were “simultaneous” as per claim 26, an interface would be expected from such art in which a program may be playing and the user then go to the characters to pick something else, during a Herz playback.

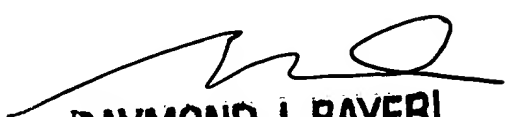
Applicant’s argument at page 6 that “Herz and Bingham fail to disclose or suggest...that the plurality of interface character personas displayed to the viewer are already associated with a respective domain of broadcast content” (claim 30) is met by noting that the Herz association with such “domain” groupings will have occurred prior to the Bingham characters being presented. Once the Herz user has specified what kind of content is desired, then it will be represented by the Bingham characters and their personas.

At pages 6 – 7, applicant provides a number of traversals by merely stating that “The cited art also fails to disclose or suggest the embodiments recited in the dependent claims”, but without any substantive line of reasoning, so the Examiner will not re-iterate the statement of rejection for those claims, which is presented in paragraph 7 above.



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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - Th from 9:30 AM to 4:30 PM ET.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached at 571-272-4063. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (571) 273-8300.
11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.



RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

27 November 2006